IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 295 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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M K CORPORATION - PROP. MALTIBEN KISHANLAL BHATIA

Versus

SHREE LAXMI PULSE RICE & ROLLER FLOUR MILLS

Appearance:

1. Appeal from Order No. 295 of 2001

MR SS PANESAR for appellants

MR KV SHELAT for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 20/08/2001

ORAL JUDGEMENT

Admitted. Mr. K.V.Shelat, learned counsel waives service of notice on behalf of the respondent. Having regard to the facts of the case and in view of the joint request made by the learned counsel for the

parties, the appeal from order is taken-up for final disposal today.

2. By filing this appeal from order under the provisions of Order-XLIII Rule-1 of the Code of Civil Procedure, 1908, the appellants have challenged legality of order dated May 3, 2001 passed by the learned 5th Jt. Civil Judge (S.D.) Godhra below Exh.91 in Special Civil Suit No. 148/2000 by which the Court has appointed Mr. Sunilkumar S. Joshi, Advocate practising in Godhra Court as well as appellant no.2 to assist him as joint receivers of the properties which are under attachment pursuant to order dated November 2, 2000.

3. The respondent has filed Special Civil Suit No. 148/2000 against the appellants and one Pravinkumar Ramlal Bhatiya for recovery of Rs. 24,27,000/- with interest in the Court of learned Civil Judge (S.D.), Godhra on November 2,2000. On the date of institution of the suit, the respondent submitted an application Exh.5 and prayed the Court to attach the properties mentioned in the application under Order-XXXVIII Rules 5 & 6 of the Code of Civil Procedure or in the alternative to restrain the defendants from transferring the properties, in any manner, to any one, during the pendency of the suit. After taking into consideration the averments made in application Exh.5, the learned Judge passed an order dated November 2, 2000 directing the defendants no.1 to 4 to furnish bank guarantee for Rs. 24 lacs on or before November 15,2000 and stipulated in the said order that in the event of failure to furnish surety, the order of attachment shall be executed. Status-quo relating to properties mentioned in application Exh.5, except at No.D, was also directed to be maintained by the defendants. The original defendants could not furnish bank guarantee on or before November 15,2000 and, therefore, attachment of the properties was made operational. Meanwhile, the respondent had submitted an application Exh.17 requesting the Court to appoint receiver of the properties attached, but the Court having regard to the facts and circumstances of the case, appointed one Mr. N.K.Mehta as Commissioner and directed him to make inventory of the properties and books of accounts as per commission patrak. The record indicates that three reports were submitted by the Court Commissioner mentioning that the appellants had not co.operated him and not permitted him to make inventory. Therefore, the respondent submitted another application at Exh.91 and requested the Court to appoint receiver of the properties attached. The learned Judge by order dated May 3, 2001 has appointed receiver subject to

conditions stipulated therein, which has given rise to present appeal.

4. Heard the learned counsel for the parties. From the record of the case, it is evident that order below Exh.91 was passed by the learned Judge on the basis of oral arguments advanced by the learned counsel for the parties and that the appellants could not produce their written statement to Exh.91. In view of this, I am of the opinion that interest of justice would be served if order dated May 3,2001 passed by the learned Civil Judge below Exh.91 is set aside and direction is given to decide the same on merits and in accordance with law after taking into consideration the reply filed by the appellants to Exh.91. The record shows that the appellants had not permitted the Court Commissioner to make inventory of the books of accounts and, therefore, necessary direction also deserves to be issued requiring the appellants to produce books of accounts before the Court so that appropriate inventory can be made and after retaining xerox copies of the same, original books of accounts can be returned to the appellants. A grievance has been made by the learned counsel for the appellants that though long back the appellants have filed reply to Exh.5, the learned Judge has not heard the same and adjourned the matter without any sufficient cause. Under the circumstances, a direction is also required to be given to the learned Judge to dispose of application Exh.5 on merits within the time to be stipulated in this order.

5. For the foregoing reasons, the appeal succeeds. The order dated May 3, 2001 passed by the learned 5th Jt. Civil Judge (S.D.) Godhra below Exh.91 in Special Civil Suit No. 148/2000 is hereby set aside and quashed. The learned Judge is directed to decide applications submitted at Exh.5, Exh.17 as well as application at Exh.91 afresh after taking into consideration the reply filed by the appellants to Exh.91 on merits as early as possible and latest within six weeks from the date of receipt of the writ. The appellants are directed to produce books of accounts prepared by them as on the date of the institution of the suit and shall submit a list of book debts till date before the Trial Court within two weeks from today. On production of books of accounts by the appellants, the Court Commissioner shall make inventory of the same and after retaining photostat copies of books of accounts, the original books of accounts shall be returned to the appellants as early as possible and latest within ten days from the date of production of books of accounts. It is clarified that

the undertaking filed by the appellants before the High Court on August 8, 2001 stating that the appellants shall not transfer, assign or create any interest of third party or create charge or enter into an agreement with any third party in respect of the properties mentioned therein,shall remain in force till the applications Exh.5,17 & 91 are disposed of by the Trial Court. The appellants are also directed that they shall not transfer,assign or create any interest of any third party or create charge or enter into an agreement with any third party in respect of book debts which are also subject matter of attachment before the trial Court, till the applications Exh.5, 17 & 91 are disposed of.

Subject to foregoing directions, the appeal is allowed with no order as to costs.

(J.M.Panchal,J.)

(patel)